

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

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2007 APR 23 A 10:29

ROSCOE LOUIS HOLLOWAY
#154358

PETITIONER

U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

VS.

3:07-CV-186-MEF (WO)

BILLY MITCHEM, et, al
RESPONDENTS

PETITIONERS TRAVERSE RESPONSE
TO RESPONDENTS ANSWER TO
PETITIONERS 28 U.S.C. § 2254

Comes now, Roscoe Louis Holloway who is the named Petitioner in the above styled case and cause, and submits this Traverse Response To The Respondents Answer, Dated 4-16-07, as the respondents move this Honorable Court to dismiss the petition under procedural default and fails to adequately and properly argue respective cause for this request. As traverse to this answer the Petitioner hereby contends and argues that:

1) Petitioner exhausted all of his state remedies properly and timely which the respondents deny by their answer and this argument is proper, as the entire record will reflect that this claim was raised and is not subject to bar by limitations or successive petition because it arises under **Rule 32.1 (b) A.R.C.R.P.**

2) Respondents answer that the state *“Stood by and ready to prove six prior convictions is without merit, as the record reflects that their basis for enhancement as an Habitual Felony Offender”* under **13A-5-9** was solely reliable on admittance by Petitioner which is not proper nor a reliable basis, as **Rule 26.6 (3) (iii)** plainly states that;

“At the hearing, the burden of proof shall be on the state to show that the Defendant has been convicted of a previous felony or felonies. Evidence may be presented by both the state and the Defendant as to any matter the court deems relevant to the application of the law. In determining disputed facts, the court shall use the standard of proof beyond a reasonable doubt. If at the hearing the Defendant disputes any conviction presented by the state, the court may allow the state to present additional evidence of the disputed conviction, either by way of rebuttal or at a future time to be set by the court. If the state fails to meet it’s burden of proof to establish on or more prior felony convictions, then the Defendant shall not be sentenced as an Habitual offender.”

As stated, the record is void of any proper avenue to invoke the Habitual Felony Offender upon Petitioner, as the respondent admits they stood by ready to prove the prior felonys, thus the state failed to meet it’s burden and the Petitioner should not have been sentenced under the **(HFO)** Act under those circumstances, as proof was never offered, hence Petitioner disputing those priors was not afforded properly by the state.

3) Respondents unsuccessfully argues procedural default and that he is procedurally barred. This avenue of reply is without any substance and is due to be denied as well, as this issue was properly addressed and argued at every stage of appeal and has been ultimately denied at every stage and is thus ripe for review on **42 U.S.C. § 2254**.

4) Certified copies of prior convictions was never presented, only the state comment about Petitioner being arrested and convicted on previous occasions apparently sufficed for the trial court, thus proper application and operation of law was not followed and state failed to present sufficient evidence to invoke trial court to follow avenue of enhancement under **13A-5-9** Ala. Code 1975.

5) Petitioner is being unlawfully detained and held in violation of his due process right under the **14th Amendment** and this is an occurrence of an unfair and bias trial court who allowed the state to convict, sentence and enhance the punishment by mere allegations and no proof to substantiate their recommendation.

CONCLUSION TO TRAVERSE

Petitioners **42 U.S.C. § 2254** is due to be granted and the respondents answer denied by their failure to provide clear and convincing evidence that the Petitioner is being detained lawfully and in accordance with Alabama States law and procedures under the **(HFO)** Act 13A-5-9.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Traverse Response" has been provided to the parties listed herein on this the 19 day of April, 2007, by placing a copy of the same in the U.S. mail with postage paid.

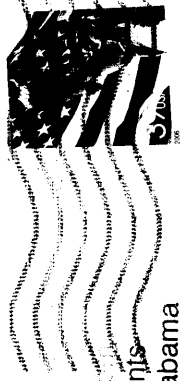
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